



**THE ATTORNEY GENERAL
OF TEXAS**

December 28, 1987

**JIM MATTOX
ATTORNEY GENERAL**

Mr. Lloyd Garza
San Antonio City Attorney
P. O. Box 9066
San Antonio, Texas 78285

Open Records Decision No. 486

Re: Whether the recent amendment of section 3(a)(15) of the Texas Open Records Act, article 6252-17a, V.T.C.S., to include birth and death records maintained by a local registration official prohibits a city from releasing summary daily birth and death lists (RQ-1268)

Dear Mr. Garza:

On behalf of the city of San Antonio, you ask about the recent amendment to section 3(a)(15) of the Texas Open Records Act, article 6252-17a, V.T.C.S., a section affecting the availability of birth and death records. In particular, you ask whether summary lists of births and deaths maintained by the city's local registrar are subject to required disclosure under the Open Records Act.

Under the Open Records Act, all information held by governmental bodies must be released to the public unless the information falls within one of the act's specific exceptions to disclosure. Prior to amendment, section 3(a)(15) protected from required disclosure:

birth and death records maintained by the
Bureau of Vital Statistics in the State of
Texas.

This office interpreted this provision to protect only birth and death records maintained by the state "Bureau of Vital Statistics" and not birth and death records maintained by local registrars. Open Records Decision Nos. 338, 307 (1982). If the legislature had intended the provision to include local birth and death records, it would not have limited the language of section 3(a)(15) to

records "maintained by the Bureau of Vital Statistics in the State of Texas." Open Records Decision No. 338.

The 70th Legislature amended section 3(a)(15), with the underscored language, to protect:

birth and death records maintained by the Bureau of Vital Statistics of the Texas Department of Health or by a local registration official. (Emphasis added.)

Acts 1987, 70th Leg., ch. 349, §1 at 3509 (enacting House Bill No. 768).

The primary concern in interpreting a statute is to ascertain and give effect to legislative intent as expressed in the language of the statute. State v. Terrell, 588 S.W.2d 784 (Tex. 1979). Interpreting legislative intent also requires consideration of the old law, the evil to be remedied, and the remedy provided by the amendment. The bill analysis to the amendment indicates that the legislature intended this amendment to address the prior decisions of the Attorney General determining that section 3(a)(15) does not apply to birth and death records held by local registration officials. Bill Analysis to H.B. No. 768, 70th Leg. (1987), on file in Legislative Reference Library. The legislative history of the amendment suggests that the legislature wished to prevent persons from assuming false identities with information from and/or copies of birth and death records and to prevent persons from abusing sensitive information contained in birth and death records.

The bill analysis to the amendment also indicates that the purpose of the amendment is to require persons to make a "formal application" for birth and death records. Both prior to and subsequent to amendment, section 3(a)(15) included a footnote reference to article 4477, V.T.C.S., rule 34a et seq, the provisions governing the collection of vital statistics. Rule 54a of article 4477 governs the availability of certified copies of birth and death records to "qualified applicants." The Open Records Act does not negate or control any special right of access held by "qualified applicants" under this provision; the Open Records Act governs general public access to public records. The amendment to section 3(a)(15) was, however, intended to require persons to obtain access to birth and death records through the procedures set forth in article

4477. Article 4477 does not, however, govern access to summary lists of births and deaths.

It has been suggested that section 3(a)(15) restricts access only to actual birth and death certificates or official records -- not to summary lists of births and deaths. We agree. Copies of actual birth and death certificates clearly create greater opportunity for abuse in falsifying identity than the opportunity for abuse created by a summary list of births and deaths. Foreclosing the opportunity for abuse through falsification of identity is one of the primary purposes of the amendment. The bill analysis states the purpose of the amendment to be "to prevent a criminal from assuming the identity of a deceased person and to keep birth records confidential." Both birth and death certificates are subject to the abuse of falsification. Additionally, birth and death records may contain sensitive notations. For example, a birth record may indicate that a child is illegitimate. A death record may indicate that the cause of death was suicide. This information may be subject to abuse. If birth records contain sensitive notations, some of these notations may be protected by section 3(a)(1). The summary lists that you have submitted for review are not, however, subject to these abuses. Additionally, this information is often made available to the public by private hospitals. The legislative history of section 3(a)(15) does not indicate that the section was intended to protect summary lists of births and deaths. Moreover, you should note that section 3(a)(15) is a permissive exception. Governmental bodies have discretion to disclose information protected by section 3(a)(15), see art. 6252-17a, §3(c), provided that once the governmental body releases the information to one member of the public, it must release the information to all members of the public.

S U M M A R Y

Section 3(a)(15) of the Texas Open Records Act, article 6252-17a, V.T.C.S., as amended by the 70th Legislature, see Acts 1987, 70th Leg., ch. 349, §1, at 3509, protects from required public disclosure birth and death records held by local registration officials. Access to birth and death certificates must be obtained through the procedures set forth in article 4477, V.T.C.S. Section 3(a)(15) applies to copies

of birth and death certificates and official records and not to summary lists of births and deaths.

Very truly yours,

A handwritten signature in black ink that reads "Jim Mattox". The signature is fluid and cursive, with the first name "Jim" and last name "Mattox" clearly distinguishable.

J I M M A T T O X
Attorney General of Texas

MARY KELLER
Executive Assistant Attorney General

JUDGE ZOLLIE STEAKLEY
Special Assistant Attorney General

RICK GILPIN
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